IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.2363 of 2013
Date of Decision: 06.02.2019.

Kanta Goyal and others
...Appellants

Versus

Anil Bansal and another
....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Rishav Jain, Advocate and
Mr. Kanish Jindal, Advocate for the appellants.

Ms. Vandana Malhotra, Advocate for respondent No.2.

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B.S.WALIA, J (Oral).

1. Appeal has been filed seeking enhancement of compensation of ₹27,46,000/- awarded by the learned Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'the Tribunal') on account of death of Hem Raj, husband of appellant No.1 and father of appellant Nos.2 and 3, in a motor vehicular accident on 07.11.2011.

2. The learned Tribunal by taking into account the age of the deceased as 54 years, making deduction of 1/3rd of the income of the deceased towards his personal expenses, by applying multiplier of '6, by making deduction of ₹3,823/ on account of payment towards Employees Provident Fund contribution, ₹1912/- towards Employees Additional Provident Fund and ₹5824/- towards income tax out of total income of

Rs.62,134.13 per month, assessed the income of the deceased @ ₹56,343/- per month for the purpose of computing the compensation payable.

3. Prayer is for enhancement on the ground that despite entitlement no amount had been paid towards future prospectus. Besides deduction of ₹3,823/- on account of payment towards the Employees Provident Fund, ₹1,912/- towards additional Employees Provident Fund was legally unsustainable and further that amount of ₹10,000/- awarded towards funeral expenses was on the lower side and was liable to be enhanced to ₹15,000/-. Moreover, no amount was paid on account of loss of estate as also loss of consortium. Lastly that as against the requirement of applying multiplier of 11, multiplier of '6' had wrongly been applied by the learned Tribunal.

4. Learned counsel for respondent No.2-Insurance Company has not been able to controvert the claim of the appellant in view of the decision of Hon'ble the Supreme Court in National Insurance Company Ltd. versus Pranay Sethi and others, 2017(4) RCR (Civil) 1009. However, learned counsel contended that income tax deduction of ₹69,888/- made by treating the monthly payment towards income tax @ ₹5824/- was on the lower side and that the income tax liability for the entire year worked out to ₹83,129/-. Learned counsel for the appellants did not controvert the plea of learned counsel for the Insurance Company to deduct income tax @ ₹83,129/- per annum instead of @ ₹69,888/-

5. I have considered the submissions of learned counsel for the parties and am of the view that in view of the decision of Hon'ble the

Supreme Court in Manasvi Jain vs. Delhi Transport Corporation 2014 (13) SCC 22, contribution towards GPF, House Rent, Insurance etc. are not to be deducted from the salary and only deduction on account of income tax is to be excluded. Relevant extract of the decision in Manasvi Jain's case (supra) is reproduced as under:-

> 13. In the present case, there is no dispute about of the salary of the deceased. As per salary certificate, his monthly income and deductions are as under:
>
> | | |
> |---|---|
> | Monthly Income | Rs. 26,950-00 |
> | Deductions | |
> | Provident Fund | Rs. 8,000-00 |
> | House Rent | Rs. 525-00 |
> | G.I.S. | Rs. 120-00 |
> | Income Tax | Rs. 2,500-00 |
>
> So, from the above table, it is clear that except an amount of Rs.2,500/- towards Income Tax, rest of the amounts were voluntarily contributed by the deceased for the welfare of his family. Considering the decision of this Court in Shyamwati Sharma & Ors., (supra), in our opinion, except contribution towards Income Tax, the other voluntary contributions made by the deceased, which are in the nature of savings, cannot be deducted from the monthly salary of the deceased to decide his net salary or take home salary. Hence, the take home salary of the deceased comes to Rs.24,450/- which can be rounded to Rs.25,000/-."

6. Accordingly in view of the decision in Manasvi Jain's case (supra), except contribution towards income tax, the other voluntary contributions made by the deceased, which are in the nature of savings, cannot be deducted from the monthly salary of the deceased to decide his net salary or take home salary.

7. Accordingly, deduction of ₹3,823/- on account of Employees Provident Fund contribution and ₹1912/- as Additional Provident Fund is legally unsustainable. The income of the deceased before making deduction was taken by the Tribunal at ₹62,134.13/- i.e. ₹7,45,608/- per annum, after deducting ₹69,888/- on account of income tax instead of ₹83,129/-. Accordingly, the net annual income works out to Rs.6,62,479/- or in other words Rs.55,206.58/- rounded off to Rs.55,207/- per month. Since, the deceased was 54 years of age, therefore, as per paragraph No.21 of the decision of Hon'ble the Supreme Court in Sarla Verma Vs. Delhi Transport Co-op. and another, 2009 (3) RCR (Civil) 77, multiplier of '11' would be applicable instead of '6' as applied by the learned Tribunal.

8. As regards appropriate compensation under conventional heads, as per paragraph No.61 (viii) of the decision in Pranay Sethi's case (supra), compensation of ₹15,000/-, ₹40,000/- and ₹15,000/- respectively is to be awarded on account of loss of estate, loss of spousal consortium and funeral expenses.

9. After taking into account decision rendered in Pranay Sethi's case (supra), Hon'ble the Supreme Court in a subsequent decision in Magma General Insurance Co. Ltd vs. Nanu Ram Alias Chuhru Ram, 2018

(4) RCR Civil 333, held that children of the deceased are entitled to ₹40,000/- each on account of loss of parental consortium. However, in view of the subsequent decision of Hon'ble the Supreme Court in Vimla Devi and others vs. National Insurance Company Ltd. and others 2019 RCR (Civil) 80, compensation of ₹1,20,000/- on account of loss of spousal/parental consortium is restricted to ₹1,00,000/-.

10. As per paragraph No.61 (iii) of the decision in Pranay Sethi's case (supra), where the deceased was between the age group of 50 to 60 years, 15% of the established income of the deceased less tax component is to be added towards future prospects while computing compensation.

Since in the instant case the deceased was a permanent employee in State Bank of Patiala and was between the age group of 50 to 60 years, therefore 15% of the established income of the deceased minus tax component is liable to be added on account of future prospects while computing compensation.

11. Accordingly, the appellants are held entitled to award of ₹15,000/- on account of loss of estate, ₹15,000/- on account of funeral expenses besides consolidated amount of Rs.1 Lakh to appellant No.1-wife and appellant Nos.2 and 3/children on account of loss of spousal/parental consortium.

12. In the circumstances, the appellants are held entitled to the following compensation:-

Sr. No.	**Head**	**Amount assessed by the Tribunal**	**Amount assessed by this Court**
1	Income	₹56,343/-	₹55,207/-
2	Future Prospects	Nil	₹8281/ i.e. 15% of ₹55,207)

Sr. No.	Head	Amount assessed by the Tribunal	Amount assessed by this Court
3.	Total Income	₹56,343/-	₹63,488/-
4.	Multiplier applied	6	11
5.	Deduction	@ 1/3rd ₹18343/-	1/3rd of ₹63,488/- i.e. ₹21,163/-
6.	Dependency	₹38,000x12x6=₹27,36,000/-	₹42,325x12x11=₹55,86,900/-
7.	Funeral Expenses	₹10,000/-	₹15,000/-
8.	Loss of Estate	Nil.	₹15,000/-
9.	Loss of Consortium	Nil.	₹40,000/- to widow on account of loss of spousal consortium, ₹40,000/- to each of the two children on account of loss of parental consortium. However, compensation awarded on account of loss of consortium is restricted to ₹1 Lakh in view of the decision in Vimla Devi's case (supra)
10.	Interest	7% per annum	7% per annum
	Total	₹27,46,000/-	₹57,16,900/-

13. Accordingly, as against the compensation of ₹27,46,000/- awarded by the Tribunal, the appellants are held entitled to award of compensation of ₹57,16,900/- along with interest @ 7% per annum w.e.f. the date of filing of the claim petition till date of payment, less amount if any already paid.

14. Needless to mention, the appellants would be entitled to the award of compensation in proportion to their shares determined by the Tribunal. The Insurance Company shall make the payment to the appellants after making deduction of the tax liability, if any, qua future prospects, in accordance with the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra).

15. Accordingly, appeal is allowed and award dated 02.01.2013, passed by the learned Tribunal, Patiala is modified to the extent as noted above.

(B.S.WALIA)
JUDGE

06.02.2019
rajesh.k.khurana

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No